

1 Houghton - Highly Confidential - Trade Secret

2 A F T E R N O O N S E S S I O N

3 1:59 p.m.

4
5 THE VIDEO OPERATOR: This is
6 videotape number 8, the continuation of the
7 deposition of Dr. Houghton. Today is August
8 11th, 1995. The time on the screen is 1:59:45.
9 You're on the the record.

10 K E N N E T H S. H O U G H T O N,
11 resumed, having been previously duly sworn, was
12 examined and testified further as follows:

13 CONTINUED EXAMINATION

01:59:46 14 BY MR. PAYTON:

01:59:48 15 Q. Dr. Houghton, do you know if Philip
01:59:52 16 Morris ever sought to use the patent that is
01:59:56 17 Houghton Exhibit -- I've forgotten the number.

01:59:58 18 A. 22.

01:59:58 19 Q. -- 22?

02:00:06 20 A. I don't recall it ever -- ever
02:00:12 21 hearing about trying to use this patent, but it's
02:00:16 22 not uncommon for us to have patents that we don't
02:00:20 23 use, okay, in the fact that you try to get
02:00:28 24 patents on anything new you find. I don't recall
02:00:28 25 having heard of this one.

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2 (Houghton Exhibit 23 for
3 identification, Motives and incentives in
4 cigarette smoke, production number PA 153072
5 through 3074.)

02:01:30 6 Q. Dr. Houghton, you've just been handed
02:01:34 7 what's been marked Houghton Exhibit 23, a
02:01:38 8 three-page memo entitled "Motives and incentives
02:01:42 9 in cigarette smoke," by William L. Dunn, Jr. It
02:01:50 10 has production number PA 153072 through 3074, or
02:01:56 11 1001820498 through 0500.

02:01:58 12 A. Yes.

02:00 13 Q. Have you seen this document before?

02:02:02 14 A. No, I haven't.

02:02:06 15 Q. Were you aware of this document's
02:02:10 16 existence as you recognize the title?

02:02:12 17 A. I object to the form the question.

02:02:12 18 Q. Do you recognize the title?

02:02:16 19 A. I don't recognize the title, but I
02:02:18 20 did start to read through the first paragraph or
02:02:22 21 so. And as such, it sounds like things that I
02:02:30 22 had read in the newspaper, referring to either
02:02:36 23 work or positions that Bill Dunn has taken in the
02:02:36 24 past.

03:04 25 Q. Did you know that Dr. Dunn was

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02:03:06 2 responsible for research on this subject, motives
02:03:10 3 and incentives in cigarette smoking, when he was
02:03:10 4 at Philip Morris?

02:03:14 5 MR. MURPHY: Objection. Lack of
02:03:14 6 foundation.

02:03:22 7 A. I was aware that he was interested in
02:03:26 8 the question why people smoke. I think there
02:03:32 9 were a lot of people interested in that
02:03:32 10 question.

02:03:34 11 Q. Philip Morris was interested in that
02:03:36 12 question, wasn't it?

03:36 13 MR. MURPHY: I object to the form of
02:03:36 14 the question.

02:03:38 15 Q. Do you know if Philip Morris was
02:03:38 16 interested in that question?

02:03:44 17 A. I can't speak for Philip Morris at
02:03:46 18 that time. I know Bill Dunn was interested in
02:03:48 19 it, from what I've read.

02:03:56 20 Q. Do you know when Dr. Dunn began
02:03:56 21 working at Philip Morris?

02:03:58 22 A. No, I don't.

02:04:10 23 Q. Do you know that Dr. Dunn edited a
02:04:16 24 book entitled "Smoking behavior motives and
04:18 25 incentives"?

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02:04:20 2 MR. MURPHY: Objection. Lack of
02:04:22 3 foundation. Objection as to form as well. You
02:04:22 4 can answer.

02:04:28 5 A. I'm aware that -- of having read that
02:04:32 6 Dr. Dunn had either edited a book or written a
02:04:34 7 book. I can't tell you specifically what the
02:04:40 8 title was, but it had to do with, as I -- my
02:04:42 9 understanding, why people smoke.

02:04:50 10 Q. Have you ever seen that book?

02:04:54 11 A. No, I haven't read Bill Dunn's books,
02:04:56 12 if he has more than one. I assume he did.

05:10 13 Q. Are you aware of a conference that
02:05:16 14 was held in 1972 on St. Martin, on the topic of
02:05:20 15 smoking behavior, motives and incentives?

02:05:22 16 MR. MURPHY: Objection as to form.

02:05:30 17 A. No. I don't recall having heard
02:05:34 18 about it.

02:05:38 19 Q. Do you know who Stanley Schachter
02:05:46 20 is? Apart from reading anything there. Do you
02:05:46 21 know --

02:05:48 22 A. No. Not apart from this.

02:05:50 23 Q. And apart from anything you saw
02:05:54 24 there, do you know who Hans Eysenck is?

05:56 25 A. I know --

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02:05:56 2 MR. MURPHY: Excuse me. I think

02:05:58 3 Eysenck.

02:06:00 4 MR. PAYTON: Eysenck.

02:06:04 5 E-y-s-e-n-c-k.

02:06:06 6 A. I'm aware of -- I guess it's

02:06:08 7 Professor Eysenck, yes.

02:06:08 8 Q. Who is he?

02:06:16 9 A. He's a researcher, and I think he's

02:06:24 10 located in the U.K.

02:07:16 11 Q. Dr. Houghton, do you know who Frank

02:07:18 12 Ryan is?

02:07:18 13 A. Yes, I do.

02:07:20 14 Q. Who is Frank Ryan?

02:07:24 15 A. Frank Ryan was a researcher that

02:07:28 16 worked at Philip Morris and retired a few years

02:07:28 17 ago.

02:07:30 18 Q. Did he work for Dr. Dunn?

02:07:36 19 A. I'm not aware^{of} that -- my knowledge of *

02:07:40 20 Frank Ryan, at that time he was working in

02:07:42 21 product evaluation division.

22 (Houghton Exhibit 24 for
23 identification, Motives and incentives in
24 cigarette smoking, production number PA 253925
25 through PA 253942.)

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02:08:08 2 Q. Dr. Houghton, you've just been handed
02:08:12 3 what's been marked Houghton Exhibit 24, a
02:08:16 4 document entitled "Motives and incentives in
02:08:20 5 cigarette smoking," same title as Houghton
02:08:24 6 Exhibit 23. It has production number PA 253925
02:08:40 7 through PA 253942, or 1003291922 through 1939.

02:08:42 8 A. Yes.

02:08:46 9 Q. Have you seen this document before?

02:08:52 10 A. No, I haven't.

02:09:02 11 MR. PAYTON: Mr. Murphy, can I ask
02:09:04 12 you a question here? This, as I understand it,
02:09:06 13 and this is just from my information, although it
02:09:10 14 shows having a "Confidential" mark on it, am I
02:09:12 15 right that this is not marked confidential for
02:09:16 16 this case, and neither was the prior document?

02:09:16 17 MR. MURPHY: That's my recollection,
02:09:20 18 John. I can verify that, but my --

02:09:22 19 MR. PAYTON: It doesn't have a stamp
02:09:22 20 for this case.

02:09:24 21 MR. MURPHY: If indeed it is the
02:09:26 22 document that I think it is, and I would have to
02:09:28 23 verify it by Bates number, I believe this is the
02:09:32 24 version of this document that was marked as an
02:09:38 25 exhibit in the Chipalone trial. It may have

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1 Houghton - Highly Confidential - Trade Secret
02:09:40 2 originally been treated as a confidential
02:09:42 3 document within Philip Morris, and even within
02:09:46 4 the Chipalone case until trial, and so stamped.

02:09:46 5 But I can check that.

02:09:50 6 MR. PAYTON: This one and the prior
02:09:52 7 one, I think that's right.

02:10:12 8 Q. Dr. Houghton, I would like you to
02:10:14 9 turn to page 7.

02:10:16 10 (Witness complies.)

02:10:24 11 Q. There's a table 1 at the bottom of
02:10:28 12 page 7. And I want you to take a look at it, but
00:32 13 I'll tell you all I really want to ask you about,
02:10:34 14 which is whether or not you have seen this table
02:10:38 15 or a similar table.

02:10:38 16 MR. MURPHY: I object to the form of
02:10:40 17 the question. Do you understand the question?

02:10:42 18 THE WITNESS: I think I understand
02:10:48 19 the question. This goes all the way to the next
02:10:48 20 page, right?

02:10:52 21 Q. I think it actually goes all the way
02:10:56 22 to the top of page 9.

02:10:58 23 MR. MURPHY: John, what do you mean
02:10:58 24 by "a similar table"?

1:00 25 MR. PAYTON: He may not have seen it

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2 in this document.

02:11:00 3 MR. MURPHY: I see. But this
02:11:00 4 information.

02:11:02 5 MR. PAYTON: Yes.

02:11:02 6 MR. MURPHY: Somewhere else?

02:11:02 7 MR. PAYTON: Yes.

02:11:04 8 MR. MURPHY: Okay.

02:12:36 9 (Witness complies.)

02:12:38 10 A. I've read through that. I don't
02:12:40 11 recall having seen a list like that lined up
02:12:42 12 someplace.

02:12:56 13 Q. Dr. Houghton, I actually do not
02:13:00 14 remember if I asked you this last time. If I
02:13:08 15 did, I apologize. Do you recall attending a
02:13:12 16 presentation by Dr. Dunn on his theories as to
02:13:14 17 why smokers continue to smoke?

02:13:16 18 MR. MURPHY: I object to the form of
02:13:20 19 the question. I think this question was asked
02:13:22 20 last time. But I'll let the witness answer the
02:13:24 21 question again.

02:13:28 22 A. I don't recall a presentation made by
02:13:34 23 Bill Dunn on why -- his thoughts on why smokers
02:13:40 24 smoke. I don't recall that. It's possible he
3:42 25 reported to me for some time, but I don't recall

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it.

(Houghton Exhibit 25 for identification, memo from G. N. Yatrakis to H. L. Spielberg dated April 4, 1990.)

Q. Dr. Houghton, you've just been handed a four-page document. The first page is a memo from G. N. --

A. Yatrakis.

MR. MURPHY: Y-a-t-r-a-k-i-s.

Q. To H. L. Spielberg dated April 4, 1990. The subject is tar/nicotine interaction, and it attaches a second memo. The production number is PB 136678 through PB 1366, and I believe it is 81. Mine is slightly difficult to read.

A. Mine is okay.

Q. And I read it correctly? Is that right?

A. 136681.

Q. And production number 2023566651 through 6654.

Dr. Houghton, you are not indicated on the first memo, but if you go to the attached memo, which is a memo from John Tindall to you,

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02:16:02 2 dated December 21st, 1989, you'll see that that
02:16:04 3 memo, you're the recipient of it.

02:16:06 4 A. Mm-hmm.

02:16:08 5 Q. Can you go back to the first memo,
02:16:10 6 and if you take a look at it, do you recall
02:16:12 7 having seen the cover memo which doesn't have
02:16:12 8 your name on it?

02:16:16 9 MR. MURPHY: Objection as to form.
02:16:18 10 You can answer.

02:17:02 11 A. I don't recall having seen that first
02:17:06 12 page.

17:10 13 Q. Who is G. N. Yatrakis?

02:17:18 14 A. George Yatrakis is a -- 1990 -- he
02:17:22 15 would have been a flavorist working in flavor
02:17:22 16 development at that time.

02:17:30 17 Q. In R&D?

02:17:30 18 A. In R&D, yes.

02:17:34 19 A. And at that time, 1990, H. L.
02:17:36 20 Spielberg was --

02:17:46 21 A. I think at that time he would have
02:17:50 22 been really assigned to the development of the
02:17:52 23 ART cigarette, I believe.

02:17:56 24 Q. ~~AD~~ Who is John Tindall? ~~X~~

18:00 25 A. John Tindall was a scientist in

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02:18:06 2 product evaluation division. His expertise is
02:18:08 3 statistics.

02:18:32 4 Q. Let me go to the attached memo from
02:18:44 5 John Tindall to you. Do you see the equation
02:18:46 6 sort of in the center of the first page that is
02:18:58 7 describing the relationship between -- what would
02:19:06 8 you say, nicotine delivery, tar, and nicotine
02:19:08 9 percentage content of the filler?

02:19:10 10 MR. MURPHY: Objection as to form.

02:19:20 11 A. *HANG ON UNTIL I*
~~Let me~~ read through it. Yes, I see *
02:19:20 12 it.

02:19:22 13 Q. Did I accurately describe what this
02:19:24 14 formula does?

02:19:28 15 A. That's what it says here. But this
02:19:34 16 is for ART tobacco.

02:20:02 17 Q. Where do you see that?

02:20:06 18 A. Hector Alonzo supplied filler
02:20:08 19 nicotine values and tar and nicotine deliveries
02:20:14 20 of the corresponding cigarettes for 31 nicotine
02:20:18 21 extraction runs, which is ART tobacco.

02:20:22 22 Q. But it's an extraction run where the
02:20:26 23 nicotine is extracted from some lamina?

02:20:30 24 A. My assumption, in just looking at it,
02:20:34 25 is when we were trying to -- we were producing

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1 Houghton - Highly Confidential - Trade Secret
02:20:44 2 ART tobacco for the test markets. What Alonzo
02:20:50 3 did was provide the data from 31 different
02:20:54 4 batches of ART extraction.

02:20:56 5 Q. Is it your understanding that that
02:20:58 6 formula would not work when applied to
02:21:02 7 unextracted lamina?

02:21:12 8 A. I don't know. My assumption would be
02:21:20 9 that probably not. That's the kind of thing that
02:21:22 10 I would have to ask a John Tindall to take a look
02:21:26 11 at and evaluate whether the statistical formula
02:21:28 12 held.

02:21:30 13 Q. Can you go back to the first page.
02:21:30 14 (Witness complies.)

02:21:36 15 Q. You see the first sentence? "Using
02:21:40 16 the formula derived by John Tindall, memo
02:21:42 17 attached, one can calculate the theoretical
02:21:44 18 nicotine delivery knowing only the filler
02:21:48 19 nicotine and tar delivery of a cigarette."

02:21:50 20 A. Mm-hmm.

02:21:52 21 Q. Do you understand that to be
02:21:56 22 referring to this formula as a general formula?

02:21:58 23 MR. MURPHY: Objection as to form.

02:22:02 24 Are you asking him whether he understands that to
02:06 25 be a formula applicable to tobaccos other than

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02:22:08 2 denicotinized tobaccos?

02:22:08 3 MR. PAYTON: I am asking him that,
02:22:10 4 yes.

02:22:10 5 MR. MURPHY: Okay.

02:22:12 6 A. I don't know if it would be or
02:22:20 7 wouldn't be. What I do know is when you go down
02:22:22 8 into his chart here, and he's talking about
02:22:24 9 filler nicotine percentages, I think what you're
02:22:28 10 looking at is ART tobaccos that have been blended
02:22:36 11 with regular, nonextracted tobaccos, or else he
02:22:40 12 got them by not extracting 97 percent. That's my
02:22:42 13 guess.

02:22:44 14 Q. The filler nicotine values you see
02:22:50 15 here are 0.3, 0.7, 1.1 and 1.5; is that correct?

02:22:52 16 A. Yes.

02:22:54 17 Q. Is the filler nicotine value of 1.5
02:22:56 18 an ART value?

02:22:58 19 MR. MURPHY: Objection as to form.
02:23:00 20 You can answer.

02:23:06 21 A. I could produce that kind of filler
02:23:12 22 nicotine level by mixing ART with nonextracted
02:23:12 23 tobaccos.

02:23:26 24 Q. Do you see there's a reference in the
02:23:30 25 second sentence on this same first page to the

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third tar/nicotine interaction study prototype?

Do you see that?

A. Yes.

Q. Do you know what that is referring
to?

A. Specifically, I don't know what 1 and
2 relate -- if this is 3. But there was a time
when we were trying to look at nicotine to tar
values in a cigarette and understand, by looking
at acceptability values for different cigarettes
with different tar and nicotine, to try and
understand possibly why the ART cigarette in
itself was not considered to be acceptable by
consumers.

And I think in there what we measured
was acceptability versus who the -- yes, I think
the tar to nicotine ratios. But without seeing
the actual data again, it's not that clear.

Q. You can put that away. I'm about to
completely change subjects.

(Houghton Exhibit 26 for
identification, fax transmission from Kathleen
Linehan with attached documents.)

Q. Dr. Houghton, you've just been handed

1 Houghton - Highly Confidential - Trade Secret
02:26:30 2 what's been marked Houghton 26, a fax
02:26:34 3 transmission cover sheet and attached documents.
02:26:38 4 The fax is from Kathleen Linehan, and it's
02:26:42 5 transmitted to a list of individuals, including
02:26:46 6 yourself. It's dated August 17, 1993. It has a
02:26:54 7 production number PB 114315 through PB 114323 or
02:27:02 8 2023228560 through 8568.
02:27:14 9 Do you remember receiving this?
02:27:16 10 A. Can I take a look at it?
02:27:26 11 Q. Sure. Who is Kathleen Linehan, by
02:27:26 12 the way?
02:27:34 13 A. Ms. Linehan was the -- I think, don't
02:27:36 14 quote me on the title, I thought it was vice
02:27:38 15 president, government affairs. Her office was
02:27:40 16 located in Washington.
02:27:42 17 Q. Vice president, Philip Morris,
02:27:48 18 U.S.A., government affairs? Government
02:27:48 19 relations?
02:27:48 20 A. Government relations -- I don't know
02:27:52 21 if she was Philip Morris U.S.A. or Philip Morris
02:27:56 22 corporate employee. I'm not -- the impression I
02:28:00 23 have is it may have been a corporate function.
02:28:02 24 I'm just not sure.
02:28:02 25 Q. Okay.

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02:35:06 2 A. Okay.

02:35:08 3 Q. Do you remember receiving this?

02:35:12 4 A. Yes.

02:35:14 5 Q. Do you remember participating in a
02:35:16 6 conversation with Ms. Linehan about these
02:35:16 7 documents?

02:35:18 8 MR. MURPHY: Objection to form.

02:35:36 9 A. I don't recall specifically a
02:35:40 10 conversation with Ms. Linehan. I know that there
02:35:46 11 were conversations regarding Wyden's request to
02:35:50 12 the Department of Health and Human Services.
02:35:52 13 Who -- I don't recall specifically who was in
02:35:54 14 it.

02:35:56 15 Q. Do you remember participating in a
02:36:02 16 conversation with more than one person about
02:36:06 17 Congressman Wyden's request?

02:36:22 18 A. I remember when the issue came up. I
02:36:24 19 don't recall who I talked to at the time about
02:36:26 20 the subject. But I recall it.

02:36:30 21 Q. Do you recall if you talked to
02:36:32 22 Dr. Carchman?

02:36:50 23 A. I don't recall ~~it~~ specifically. *

02:36:54 24 Q. On the second page, it's past the fax
02:36:56 25 page, the page you were just holding, actually,

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1 Houghton - Highly Confidential - Trade Secret
02:37:00 2 the memo to distribution from Kathleen Linehan
02:37:04 3 dated August 17, and it says, "Re: Congressional
02:37:08 4 inquiry/HHS response on ingredients."

02:37:10 5 Do you have that document in front of
02:37:10 6 you?

02:37:10 7 A. Yes.

02:37:26 8 Q. Attached to this memo are two
02:37:34 9 letters. Do you know where Ms. Linehan obtained
02:37:34 10 those letters?

02:37:36 11 A. No.

02:37:58 12 Q. Ms. Linehan's memo refers to the
03:02:02 13 ingredient list filed with HHS. Do you see
02:38:04 14 that? It's in the -- there's a reference to it
02:38:06 15 in the re line but it's in the first line of the
02:38:08 16 memo as well.

02:38:08 17 A. Yes.

02:38:14 18 Q. Do you know what she is referring to
02:38:16 19 when she says, "The ingredient list filed with
02:38:18 20 HHS"?

02:38:18 21 A. Yes.

02:38:20 22 Q. What is it?

02:38:24 23 A. Every year, I think it's the '84
02:38:30 24 cigarette -- Safe Cigarette Act may be the title
03:38:36 25 of it -- requires that the industry, and by "the

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02:38:42 2 industry" I'm talking about the six U.S.-based
02:38:48 3 tobacco companies, must submit a composited list
02:38:54 4 of all of the ingredients that are utilized by
02:39:00 5 those six companies in the manufacturing of
02:39:02 6 cigarettes.

02:39:04 7 And these are ingredients that are
02:39:06 8 added to the tobacco during the manufacturing of
02:39:10 9 cigarettes. And I think the first list was
02:39:18 10 required to be submitted in 1986, and basically
02:39:20 11 the industry has been submitting an updated list
02:39:24 12 each year since then.

39:26 13 Q. And at this time, this is 1993, was
02:39:28 14 that list confidential?

02:39:36 15 A. There is in the law that required
02:39:44 16 this a level of confidentiality under which it
02:39:48 17 was to be submitted and handled by the Department
02:39:50 18 of Health and Human Services, that my
02:39:58 19 understanding is related to trade secret.

02:40:06 20 Q. Ms. Linehan's memo, the second
02:40:08 21 sentence says, "It is the first document I have
02:40:14 22 seen which details exactly what HHS has done,
02:40:16 23 revealing an NCI review of selected ingredients,
02:40:20 24 and that 13 ingredients which are outside the FDA
02:40:24 25 approved list with five classified as hazardous

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2 substances."

02:40:26 2
02:40:34 3 Do you know what NCI refers to
02:40:34 4 there?

02:40:40 5 A. It's the National Cancer Institute, I
02:40:52 6 assume. Yes. It says so on page 2 of Dowdle's
02:40:56 7 letter to Wyden. It says, "National Cancer
02:40:58 8 Institute, NCI."

02:41:02 9 Q. Prior to Ms. Linehan's memo of August
02:41:14 10 17 that you received, did you have an
02:41:16 11 understanding as to what HHS was doing with the
02:41:18 12 ingredient list?

02:41:18 13 MR. MURPHY: Objection as to form.
02:41:20 14 Vague and ambiguous.

02:41:36 15 A. I know that up until that time there
02:41:38 16 had been -- I believe there had been approaches
02:41:46 17 to HHS by the law firm that acted as the
02:41:48 18 accumulator of the information from the six
02:41:52 19 companies, and submitted it on behalf of the six
02:41:54 20 companies to the Department of Health and Human
02:41:54 21 Services.

02:41:58 22 There had ^{been} ~~opinion~~ approaches by the ~~X~~
02:42:02 23 law firm to indicate that if there were any
02:42:06 24 issues that Department of Health and Human
02:42:10 25 Services in reviewing the list had with any of

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02:42:14 2 the ingredients on the list, that the industry
02:42:18 3 would be willing to discuss any issues or
02:42:20 4 questions the Department of Health and Human
02:42:22 5 Services had.

02:42:30 6 And that was my impression of an
02:42:34 7 industry approach to the Department of Health and
02:42:34 8 Human Services. I don't believe there was any
02:42:46 9 follow-up by the HHS to discuss the ingredient
02:42:50 10 list~~s~~ and by that time, this is '93, so we had *
02:42:56 11 '86, 7, 8, 9, '90, 1, 2 -- they had had seven
02:42:58 12 lists submitted.

02:43:00 13 And as far as I know, there had been
02:43:06 14 no response from the Department of Health and
02:43:10 15 Human Services to the offer to discuss anything
02:43:12 16 on the list.

02:43:14 17 Q. Did you know if they were attempting
02:43:16 18 to analyze the ingredients on the list?

02:43:18 19 MR. MURPHY: Objection as to form.
02:43:22 20 What do you mean by "analyze," John?

02:43:24 21 MR. PAYTON: Analyze. Chemically
02:43:24 22 analyze.

02:43:28 23 MR. MURPHY: Chemically analyze or
02:43:30 24 review and --

02:43:30 25 MR. PAYTON: Chemically analyze.

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02:43:30 2 MR. MURPHY: -- discuss?

02:43:32 3 MR. PAYTON: Chemically analyze.

02:43:34 4 MR. MURPHY: Laboratory ingredients
02:43:36 5 by HHS, is that the question?

02:43:36 6 MR. PAYTON: Yes.

02:43:42 7 A. I didn't know what they would be
02:43:48 8 doing or could be doing. Department of Health
02:43:52 9 and Human Services Center for Disease Control has
02:43:54 10 very sophisticated capability, laboratory
02:43:58 11 capability. But, you know, we gave a list of
02:44:02 12 ingredients. We didn't submit samples of
44:08 13 ingredients per se.

02:44:10 14 So I had no idea what they might or
02:44:14 15 might not be doing, although CDC is a very
02:44:16 16 capable analytical organization.

02:44:20 17 Q. You didn't know if they were
02:44:20 18 attempting to do a risk analysis of the
02:44:22 19 ingredient list?

02:44:24 20 MR. MURPHY: Objection. You can
02:44:24 21 answer.

02:44:28 22 A. I don't recall having heard that they
02:44:30 23 were doing one, although there is some
02:44:34 24 requirement in the law for them to evaluate it.
44:40 25 And I thought -- was it Wyden's letter that he

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02:45:06 2 mentions that? I saw it someplace. Maybe it's
02:45:08 3 in this thing. Yes.

02:45:12 4 "The law further requires at such
02:45:14 5 times as the Secretary," I guess that's
02:45:16 6 Department of Health and Human Services,
02:45:20 7 "considers appropriate that the Secretary shall
02:45:22 8 transmit to Congress a report based upon the
02:45:26 9 information provided on the list. The report is
02:45:30 10 to include summary of research activities and
02:45:32 11 proposed research on health effects of
02:45:34 12 ingredients."

02:45:34 13 So --

02:45:36 14 Q. Where are you reading from?

02:45:40 15 MR. MURPHY: 2023228566, the first
02:45:42 16 page, April 21, 1993 letter.

02:45:48 17 A. States that Department of Health and
02:45:50 18 Human Services -- and this law was the
02:45:54 19 Comprehensive Smoking Education Act -- that they
02:45:58 20 did have the requirement to do research
02:46:06 21 activities on that, on the ingredients, and to
02:46:10 22 provide information pertaining to any ingredient
02:46:12 23 which in the judgment of the secretary posed a
02:46:18 24 health risk to cigarette smokers, and I assumed,
02:46:22 25 you know, I was aware that they had that

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02:46:24 2 accountability in general.

02:46:26 3 I just assumed they would have lived
02:46:28 4 up to it.

02:46:36 5 Q. Do you see that there are referenced
02:46:40 6 in the first letter, as in the very last page of
02:46:42 7 the first letter, there is a reference to
02:46:46 8 attachments to the letter. And in Ms. Linehan's
02:46:48 9 memo, the first --

02:46:50 10 A. Which letter --

02:46:50 11 MR. MURPHY: When you say "the first
02:46:56 12 letter," John, you're referring to the letter --

47:00 13 A. I think it's the letter that Dowdle
02:47:08 14 writes, wasn't it, that he says there were some
02:47:08 15 attachments? I thought that's where I read
02:47:08 16 that.

02:47:16 17 Q. I think it is in the letter to Wyden
02:47:18 18 from Secretary --

02:47:22 19 A. Acting Secretary Dowdle.

02:47:24 20 Q. Yes. And I'm calling that the first
02:47:28 21 letter. In Dowdle's letter.

02:47:32 22 A. "Enclosed are copies of the reviews
02:47:34 23 NCI has completed to date."

02:47:34 24 Q. That's correct.

47:36 25 A. That's what it says.

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02:47:38 2 Q. Right. And those are attachments.

02:47:42 3 A. That's what you would have expected,
02:47:46 4 but I didn't see something that indicated that.

02:47:52 5 Q. Now go back to Ms. Linehan's memo,
02:47:58 6 her August 17 memo, the first paragraph. It
02:48:06 7 refers to the letter from Wyden, "The letter
02:48:10 8 invites changes to the law," and the last
02:48:10 9 sentence says, "As soon as we get the attachments
02:48:12 10 we will send them to you."

02:48:14 11 Do you see that?

02:48:16 12 A. "The letter invites" --

02:48:18 13 MR. MURPHY: That's what it says.

02:48:26 14 A. Okay.

02:48:28 15 Q. Do you know if you ever received the
02:48:30 16 attachments?

02:48:32 17 A. I don't recall having seen an
02:48:32 18 attachment.

02:49:28 19 Q. Dr. Houghton, do you recall if Philip
02:49:30 20 Morris took any action as a result of having
02:49:34 21 received this memo and the attached two letters
02:49:36 22 from Ms. Linehan?

02:49:38 23 MR. MURPHY: Objection as to form.

02:49:42 24 A. If you're asking me what I did as a
02:49:44 25 result of that, this letter?

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02:49:46 2 Q. Mm-hmm.

02:49:54 3 A. What I recall asking at the time is,
02:49:58 4 what are the 13 ingredients and what are the five
02:50:04 5 ingredients that they're talking about.

02:50:06 6 Q. And did you learn what the 13
02:50:08 7 ingredients were and what the five ingredients
02:50:08 8 were?

02:50:16 9 A. I believe that about the same time,
02:50:26 10 there was a program on public -- National Public
02:50:32 11 Radio, NPR, that talked about these same 13
02:50:36 12 ingredients, okay? And I recall at that time --
02:50:38 13 I do recall hearing what they were.

02:50:40 14 I couldn't name them for you, or the
02:50:46 15 five right off the top of my head. I do recall
02:50:52 16 discussions at that time, and asking about --
02:50:56 17 well, what's the impact of this, and what I
02:51:00 18 recall is, hey, they've been on the list, they've
02:51:04 19 been on the list for years, okay, the real issue
02:51:08 20 here is not the ingredient but is the level of
02:51:12 21 usage of ingredients.

02:51:20 22 At some time later, the entire
02:51:26 23 ingredient list was reviewed by independent
02:51:30 24 toxicologists, and if I recall correctly, their
02:51:34 25 assessment of the ingredients on the list is that

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2 these ingredients do not pose a health problem,
3 based upon their review of the information on
4 that list.

5 What is the time that this is taking
6 place, how many months, I don't recall
7 specifically.

8 Q. Dr. Houghton, the memo from
9 Ms. Linehan is August 17, 1993.

10 A. Mm-hmm.

11 Q. Could it be that the NPR program that
12 you are recalling didn't take place until spring
13 of 1994?

14 MR. MURPHY: Objection as to form.

15 Q. I'm just trying to refresh your
16 recollection.

17 A. I just don't recall. I remember
18 hearing about it. I'm just not sure what the
19 timing is. I do recall that NPR broadcast, and
20 if I'm correct, I think they were talking about
21 13 ingredients on that broadcast.

22 MR. MURPHY: We're getting very far
23 afield, John. I mean, you can use your time as
24 you please, but I think that none of this so far
25 has anything to do with anything.

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02:54:06 2 Q. Dr. Houghton, you've been handed a
02:54:10 3 two-page document that has been previously marked
02:54:14 4 as an exhibit in Mr. Han's deposition.

02:54:20 5 It's marked Han 7, a two-page
02:54:24 6 document. It's a letter from Michael Eriksen,
02:54:28 7 director, Office on Smoking and Health, National
02:54:30 8 Center for Chronic Disease Prevention and Health
02:54:34 9 Promotion, to Michael A. Miles, chief executive
02:54:36 10 officer, Philip Morris. It's dated September 27,
02:54:38 11 1993.

02:54:44 12 A. Okay.

54:48 13 Q. Do you recall seeing this letter
02:54:48 14 before?

02:54:52 15 A. Can I read it first?

02:54:52 16 Q. Sure.

02:55:32 17 A. Yes.

02:55:34 18 Q. You've seen this letter before?

02:55:36 19 A. Yes, I recall seeing that.

02:55:40 20 Q. I believe the first day of your
02:55:42 21 deposition referred to a letter from Michael
02:55:46 22 Eriksen related to ingredients. Do you recall
02:55:46 23 that?

02:55:48 24 A. Yes.

55:50 25 Q. And is this that letter?

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02:55:58 2 A. I don't know. There may have been
02:56:02 3 more than one letter from Eriksen. I have the
02:56:06 4 feeling there was more than one letter, in about
02:56:14 5 the same time frame. What I recall at the time
02:56:18 6 is a response to this request was made, and what
02:56:22 7 it may have done is elicited another letter from
02:56:26 8 Eriksen, which is the one I think I was referring
02:56:30 9 to the first day of my deposition.

02:56:34 10 Q. Do you recall seeing this letter
02:56:38 11 around the time of the letter, that is, around
02:56:40 12 September 27, 1993?

02:56:46 13 A. I recall the request for information
02:56:50 14 to answer issues on this thing at that time.

02:56:54 15 Q. Did you know Michael Miles?

02:56:54 16 A. Yes.

02:57:00 17 Q. The handwriting on this letter I
02:57:04 18 believe says K, and then "PLS," "Please follow up
02:57:06 19 for response." Do you see that?

02:57:08 20 A. Yes.

02:57:10 21 Q. Are you by chance the K?

02:57:22 22 A. My reaction to it is I might not be,
02:57:22 23 okay? I don't know for sure, but I might --
02:57:28 24 would -- if that's from Mike Miles, I said I knew
02:57:30 25 him, but -- no, I don't think he would have sent

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0 57:32 2 that directly to me.

02:57:36 3 Now, who it could be, I'm not sure.

02:57:58 4 Q. I'm going to just read the
02:58:00 5 substance. I'm skipping the first sentence. It
02:58:02 6 just announces who they are. Second sentence
02:58:06 7 says, "We consider an 'ingredient added to
02:58:10 8 tobacco' to include substances which are
02:58:12 9 extracted from tobacco and then reintroduced into
02:58:14 10 the product."

02:58:16 11 Do you see that?

02:58:28 12 A. Yes.

02:58:36 13 Q. Actually I'll read the rest of it
02:58:40 14 too. The second paragraph reads, "Nicotine is a
02:58:42 15 natural component of tobacco which we understand
02:58:44 16 may be extracted during the cigarette
02:58:48 17 manufacturing process. We seek information about
02:58:50 18 whether this substance currently is being
02:58:54 19 reintroduced or augmented to tobacco during the
02:58:58 20 manufacturing process of your cigarettes.

02:59:00 21 "Please notify us in writing within
02:59:04 22 30 days of the date of this letter whether, one,
02:59:06 23 nicotine or any other ingredients naturally
02:59:06 24 occurring in tobacco are extracted and
02:59:10 25 reintroduced, and/or, two, nicotine from other

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02:59:12 2 sources is added in the production of
02:59:14 3 cigarettes."

02:59:20 4 Did you play a role in Philip
02:59:22 5 Morris's response to those inquiries?

02:59:26 6 A. Yes.

02:59:28 7 Q. And what was your role?

02:59:36 8 A. My role was to provide people in my
02:59:40 9 organization who were able to provide information
02:59:46 10 to generate the letter that went back to Michael
02:59:48 11 Eriksen.

02:59:52 12 Q. And did the information that was
02:59:56 13 gathered by your people, was it transmitted by
02:59:56 14 you?

02:59:58 15 MR. MURPHY: Objection as to form.
03:00:00 16 You mean him personally?

03:00:02 17 MR. PAYTON: Yes.

03:00:06 18 A. No.

03:00:12 19 Q. Who did you ask to help come up with
03:00:16 20 the information to respond to these inquiries?

03:00:26 21 A. What I recall is that I think it was
03:00:34 22 Harold Burnley in my organization, and it -- it
03:00:42 23 may have been Frank Daylor from the point of view
03:00:50 24 of alcohol. That's -- there may have been people
03:00:52 25 from other organizations who also provided input.

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03:00:54 2 Q. Outside of R&D, you mean?

03:00:56 3 A. Yes, it could have been.

03:00:58 4 Q. Do you know if Dr. Carchman played a
03:00:58 5 role?

03:01:04 6 A. Since Mr. Daylor is a consultant to
03:01:06 7 Dr. Carchman in his organization, it's quite
03:01:08 8 possible.

03:01:30 9 Q. As far as you knew, was this the
03:01:36 10 first time that HHS had indicated that it
03:01:38 11 considered an ingredient added to tobacco to
03:01:40 12 include substances which are extracted from
01:46 13 tobacco and then reintroduced?

03:01:46 14 MR. MURPHY: Objection as to form.

03:01:46 15 A. The first time I had heard anything
03:01:48 16 like that.

03:01:50 17 MR. MURPHY: Would this be a
03:01:52 18 convenient time for a short break, John?

03:01:52 19 MR. PAYTON: Sure.

03:01:54 20 THE VIDEO OPERATOR: We're going off
03:01:56 21 the record. The time on the screen is 3:01:57.

03:01:58 22 (A recess was taken.)

03:16:22 23 THE VIDEO OPERATOR: We're back on
03:16:26 24 the record. The time on the screen is 3:16:26.

16:44 25 Q. Mr. Houghton, was there a particular

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03:16:46 2 individual who was responsible for assembling the
03:16:50 3 information in response to Mr. Eriksen's letter?

03:17:00 4 A. I don't recall who that might have
03:17:04 5 been. I just don't recall.

03:17:10 6 Q. Do you know if they provided you with
03:17:14 7 the information that was responsive to
03:17:16 8 Mr. Eriksen's inquiry?

03:17:16 9 MR. MURPHY: Objection. Asked and
03:17:18 10 answered. You can answer again.

03:17:22 11 A. I think there would have been no need
03:17:24 12 for it to pass through me to go to somebody
17:28 13 else. The people who would have worked on it
03:17:30 14 would have had direct communication.

03:17:44 15 Q. Assuming they did have direct
03:17:46 16 communication, do you know if you nevertheless
03:17:50 17 received a communication from them?

03:17:54 18 MR. MURPHY: Objection to form.

03:17:58 19 A. I just don't recall exactly. Would I
03:18:00 20 have --

03:18:00 21 Q. No, did you.

03:18:04 22 A. I don't know if I did or didn't.

03:18:06 23 MR. MURPHY: John, when you say
03:18:10 24 "direct communication," with whom?

18:12 25 Q. Let me just ask the question again,

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03:18:24 2 Dr. Houghton. Did the persons who were working
03:18:26 3 on assembling the information in response to
03:18:34 4 Mr. Eriksen's inquiry advise you of the response
03:18:36 5 that they had assembled?

03:18:46 6 A. I believe I saw the -- and I believe
03:18:52 7 it was Harold Burnley who addressed the issues of
03:18:56 8 reconstituted tobacco, which answers one of the
03:18:58 9 questions in there.

03:19:02 10 I believe I saw that. I don't know
03:19:08 11 if I saw it before it was finalized or after it
03:19:10 12 was finalized in response to Eriksen.

03:19:22 13 MR. MURPHY: My question is, the
03:19:24 14 direct communication, John, an ambiguity in the
03:19:28 15 question, was a little different. I meant direct
03:19:32 16 communication in response to Eriksen. Were you
03:19:36 17 asking him whether Philip Morris personnel had
03:19:40 18 any direct communication with Eriksen?

03:19:42 19 I just wanted to make the record
03:19:44 20 clear that that's not what -- okay.

03:19:48 21 MR. PAYTON: This exhibit I think
03:19:50 22 will allow an opportunity.

03:19:52 23 MR. MURPHY: I understand that.

24 (Houghton Exhibit 27 for
25 identification, letter from Stanley Temko of

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1 Houghton - Highly Confidential - Trade Secret
2 Covington & Burling to Michael Eriksen dated
3 October 25, 1993.)

03:20:34 4 Q. Dr. Houghton, you've just been handed
03:20:38 5 a three-page letter from Stanley Temko of
03:20:42 6 Covington & Burling to Michael Eriksen dated
03:20:46 7 October 25, 1993. It has production number PA
03:20:58 8 421073 through 1075, or 2022997676 through 7678.

03:20:58 9 A. Yes.

03:21:00 10 Q. Do you recognize this letter?

03:21:02 11 A. Can I take a look at it for a
03:21:04 12 second?

03:21:04 13 Q. Yes.

03:22:12 14 MR. PAYTON: For the record, let me
03:22:16 15 identify this letter as Exhibit 27. Houghton
03:22:20 16 Exhibit 27 is the October 25, 1993 letter from
03:22:20 17 Mr. Temko.

03:24:06 18 A. Okay.

03:24:08 19 Q. Do you recall this letter?

03:24:08 20 A. Yes.

03:24:12 21 Q. Is this what you were remembering
03:24:16 22 when you referred to correspondence with
03:24:18 23 Mr. Eriksen the first day of your deposition?

03:24:20 24 MR. MURPHY: Objection as to form.

03:30 25 A. I'm not -- I thought there might have

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00:24:34 2 been another letter from Mr. Eriksen. This is a
03:24:38 3 letter going to Mr. Eriksen.

03:24:42 4 Q. Dr. Houghton, let me just tell you
03:24:44 5 that there is another letter to Mr. Eriksen and
03:24:46 6 there is another letter from Mr. Temko. We're
03:24:48 7 going to get to them.

03:24:48 8 A. Okay.

03:24:50 9 Q. There's a letter I believe in
03:24:52 10 December, and there is a letter in January.

03:24:54 11 A. Okay.

03:24:56 12 Q. A further exchange coming.

:24:58 13 A. This may have been the one I was
00:25:00 14 thinking about at the time. I thought it was
03:25:04 15 from Eriksen, but it was really to Eriksen from
03:25:06 16 Covington & Burling, which is the law firm I
03:25:10 17 mentioned before that collected the information
03:25:12 18 on ingredients from the different companies and
03:25:12 19 submitted it.

03:25:16 20 Q. Do you see in the footnote on page
03:25:20 21 1? There's a list of the companies.

03:25:24 22 A. Yes.

03:25:28 23 Q. It's seven companies. Gallaher is
03:25:30 24 the additional company.

:25:38 25 A. Yes, but Gallaher was a wholly-owned

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03:25:42 2 subsidiary of American Tobacco Company. So when
03:25:46 3 I think about the six American tobacco companies,
03:25:50 4 Gallaher is a British company.

03:25:52 5 Q. Did Dr. Ellis play any role in
03:25:54 6 responding to Mr. Eriksen's inquiries?

03:26:02 7 A. I don't recall that.

03:26:22 8 Q. Do you recall reviewing any draft of
03:26:24 9 this letter before it went out?

03:26:26 10 A. From Covington & Burling?

03:26:26 11 Q. Yes.

03:26:34 12 A. It's possible. I just don't recall
03:26:48 13 it. Let me address that again. I believe that
03:26:52 14 we would have seen the letter prior to it having
03:26:56 15 gone out as a result of Covington & Burling
03:27:02 16 working for the different tobacco companies.

03:27:04 17 In that sense I may have seen a
03:27:08 18 letter that you would call a draft until they got
03:27:12 19 feedback from the companies.

03:27:36 20 Q. Does this letter accurately describe
03:27:46 21 the RL process that Philip Morris uses? That
03:27:48 22 would be only in the paragraph that carries over
03:27:50 23 from page 1 to the top of page 2.

03:28:02 24 A. It accurately expresses the RL
03:28:04 25 process up until the time I was responsible for

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03:28:06 2 it. I don't think there are any differences.

03:28:16 3 Q. In the next paragraph, on the second
03:28:24 4 page, the paragraph that relates to tobacco
03:28:26 5 extracts, do you see that?

03:28:26 6 A. Yes.

03:28:30 7 Q. It says, "Your second inquiry."

03:28:34 8 A. Yes.

03:28:36 9 Q. The last sentence of that paragraph
03:28:38 10 says, "Quantity of nicotine indirectly added to
03:28:42 11 tobacco from the use of tobacco extracts is on
03:28:46 12 the order of 2.5 PPM, parts per million, or less
28:50 13 than 1 three thousandths of a percent by weight
03:28:52 14 of the tobacco blend." Do you see that?

03:28:54 15 A. Yes, I do.

03:28:54 16 Q. Do you know what the reference to
03:28:56 17 "indirectly added" means?

03:29:02 18 A. What it means is that in tobacco
03:29:08 19 extracts, and I'm -- as far as the numbers go, I
03:29:10 20 don't know if this is Philip Morris information,
03:29:12 21 this is some other company information.

03:29:14 22 Q. Right.

03:29:18 23 A. What it says to me here is that in
03:29:22 24 using a tobacco extract as a flavorant, that the
29:28 25 possibility would exist for a small amount of

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03:29:34 2 nicotine in that extract from tobacco could be
03:29:38 3 added as a result of using it as a flavor.

03:29:48 4 Q. Would you consider that to be
03:29:48 5 directly added?

03:29:50 6 MR. MURPHY: Objection as to form.
03:29:52 7 Argumentative.

03:29:58 8 A. Are you asking me would the flavor
03:30:04 9 value of a tobacco extract be the same if
03:30:08 10 whatever this amount of nicotine that might be in
03:30:10 11 somebody's flavor extract wasn't there? I would
03:30:18 12 expect it would have the same value. I think you
03:30:18 12 add the tobacco extract to get the flavor, get
03:30:24 14 the aroma. The fact that there's some nicotine
03:30:28 15 in there, I think "indirectly" is okay to use as
03:30:28 16 a term there.

03:30:30 17 I think that's appropriate.

03:31:04 18 Q. I'm to the very end of the letter on
03:31:12 19 the third page, the paragraph about nicotine and
03:31:20 20 the tobacco. The last two sentences say, "Blends
03:31:22 21 provided basis for differentiation of many brands
03:31:24 22 and for differences between manufacturers. The
03:31:28 23 final cigarette blend level is dependent upon" --
03:31:32 24 oops, that's not what I meant. I wanted to go
03:31:34 25 back to the sentence that carries over.

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03:31:36 2 "The companies provide the consumer
03:31:38 3 with a consistent quality product by blending
03:31:40 4 these tobacco types along with tobaccos processed
03:31:48 5 by proprietary methods." Does Philip Morris use
03:31:52 6 proprietary methods to --

03:31:52 7 MR. MURPHY: Let's read the full
03:31:54 8 paragraph, John. You've got a reference to
03:31:58 9 "these tobacco types," and you don't have the
03:32:00 10 rest of the question clear. Why don't you just
03:32:08 11 read that short paragraph into the record and
03:32:08 12 then ask your question.

32:08 13 MR. PAYTON: What "these tobacco
03:32:08 14 types"?

03:32:10 15 MR. MURPHY: You began with the
03:32:14 16 sentence of the carryover of page 2 to 3, which
03:32:18 17 says "The companies provide." I'm asking to you
03:32:20 18 please begin with "The only significant source of
03:32:24 19 nicotine," and explain what it is that the phrase
03:32:26 20 that you used by "blending these tobacco types"
03:32:28 21 refers to.

03:32:30 22 MR. PAYTON: I can just ask him the
03:32:32 23 standalone question instead of looking at the
03:32:34 24 letter. I hear your point. I don't need to
32:36 25 know -- I don't care what Mr. Eriksen says, or

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3:32:38 2 Mr. Temko says.

3:32:40 3 Q. Dr. Houghton, does Philip Morris use
3:32:44 4 a proprietary processing method in the
3:32:44 5 manufacture of cigarettes?

3:32:48 6 MR. MURPHY: Objection as to form.

3:32:52 7 Q. Do you know?

3:32:54 8 A. What does the word "proprietary" mean
3:32:58 9 for you? Or what definition are you putting on
3:33:02 10 it? Or do you want to know what I think the word
3:33:02 11 means to me?

3:33:04 12 Q. Do you have an understanding of what
3:33:06 13 the word "proprietary" means to me?

3:33:08 14 A. What it means --

3:33:08 15 MR. MURPHY: As used in this
3:33:10 16 context?

3:33:10 17 MR. PAYTON: No.

3:33:12 18 MR. MURPHY: As used in any context?

3:33:12 19 MR. PAYTON: Yes.

3:33:14 20 MR. MURPHY: You can answer the
3:33:14 21 question.

3:33:14 22 A. My understanding of what
3:33:20 23 "proprietary" means is that, for instance, be
3:33:22 24 covered by a patent. If you have a patent it
3:28 25 would give you protection, and therefore that

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03:33:36 2 methodology could only be utilized by you, okay?

03:33:42 3 So in view of that, if your question
03:33:48 4 is do we have tobacco processing methods that are
03:33:54 5 covered by patents, the answer to that is yes.
03:33:58 6 For instance, our expanded tobacco process is
03:34:00 7 patented.

03:34:04 8 Q. Is the process that is used in the RL
03:34:06 9 line 1 a patented process?

03:34:08 10 MR. MURPHY: As of when?

03:34:12 11 MR. PAYTON: As of 1993.

03:34:12 12 MR. MURPHY: Okay.

03:34:18 13 A. I would have to go back and look at
03:34:24 14 the age of patents that we license from
03:34:28 15 Schweitzer. And I would have to go back and see
03:34:32 16 if we had any patents that might cover a portion
03:34:36 17 of that process. I think it's possible that we
03:34:42 18 might still have active patents on certain parts
03:34:46 19 of the process such as the part where you cut it,
03:34:48 20 because we had a patent on the cutting of it.

03:34:52 21 I'm just not sure -- I think it would
03:34:54 22 be effective still.

03:34:58 23 Q. Line 1 at Park 500 used a process
03:35:02 24 that was originally licensed from Schweitzer; is
25 that correct?

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03:35:08 2 A. Yes. We licensed from Schweitzer the
03:35:12 3 right to operate under a whole series of patents
03:35:12 4 that they had.

03:35:18 5 Q. And did line 2 obtain the same
03:35:20 6 license arrangements from Schweitzer?

03:35:24 7 A. I think we had -- our licensing
03:35:30 8 agreement gave us the right to build as many
03:35:38 9 plants as we wanted to there in the U.S. That's
03:35:38 10 my understanding.

03:35:40 11 Q. And what's your understanding as to
03:35:42 12 the process that is used on line 3?

35:46 13 A. My understanding of the process used
03:35:50 14 on line 3, it's the Schweitzer process.
03:35:52 15 Improved, as you would any process over time.

03:36:04 16 Q. Is line 3's process different from
03:36:08 17 lines 1 and 2's processes?

03:36:10 18 MR. MURPHY: Objection as to form.

03:36:18 19 A. As we operate any process over time
03:36:22 20 we continue to improve the processes, and as such
03:36:26 21 there are going to be some differences in each
03:36:30 22 generation of the processes as you build it or
03:36:38 23 rebuild it. It basically is the Schweitzer
03:36:38 24 process.

16:56 25 Q. Dr. Houghton, you have been handed a

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2 copy of an exhibit used in Mr. Han's deposition.
3 This is Han Exhibit 5, a December 10, 1993 letter
4 from Michael Eriksen to Mr. Temko, responding to
5 Mr. Temko's October 25, 1993 letter.

6 MR. MURPHY: Is there a question?

7 MR. PAYTON: He's just looking at
8 it.

9 A. Yes.

10 Q. Do you recall seeing this letter?

11 A. I believe so.

12 Q. Do you recall seeing this letter
13 around the time it is dated, December 10, 1993?

14 A. Yes.

15 Q. And did you have any role in
16 preparing any response that was made by Philip
17 Morris to this letter?

18 A. I believe I had essentially the same
19 role I had in response to his other letter.

20 Q. You have just been handed an exhibit
21 that was used in Mr. Han's deposition. This is
22 Han Exhibit 4, a January 19, 1994 -- it was
23 mistyped, but it's corrected on the letter --
24 1994 letter from Mr. Temko to Mr. Eriksen,
25 responding to Mr. Eriksen's December 10, 1993

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letter.

A. Yes.

Q. Do you recall seeing this letter?

A. Let me read through the thing.

What was your question again?

Q. Do you recall seeing this letter?

A. Yes.

Q. At or about the time that it is dated, January 19, 1994?

A. Yes.

Q. Did you play a role in providing information constituting Philip Morris's response to the December 10, 1993 letter from Mr. Eriksen?

A. What I recall is I believe that it was Harold Burnley who would have been working to address the questions in Mr. Eriksen's letter of December 10th.

Q. Dr. Houghton, the initial Day One broadcast that is the subject of this lawsuit ran on February 28th, 1994.

A. Yes.

Q. Did you play a role in responding to inquiries made of Philip Morris by Day One in

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03:43:44 2 preparation of that story?

03:43:46 3 MR. MURPHY: Objection as to form.

03:43:54 4 A. Inquiries made by Day One to Philip
03:43:56 5 Morris prior to the story? Is that what you are
03:43:58 6 asking me?

03:43:58 7 Q. Yes.

03:44:00 8 A. No.

03:44:06 9 Q. Did you play a role in -- internal to
03:44:14 10 Philip Morris -- did you play a role in compiling
03:44:20 11 information on behalf of Philip Morris to be used
03:44:22 12 in response to inquiries from Day One?

04:24 13 MR. MURPHY: Objection as to form.
03:44:26 14 Same time period?

03:44:28 15 MR. PAYTON: Yes.

03:44:38 16 A. I wasn't aware of ^{the} inquiries. *

03:45:36 17 Q. Dr. Houghton, do you recall playing a
03:45:42 18 role -- I'll give you a date -- on Thursday or
03:45:46 19 Friday, February 24-25, that's the Thursday or
03:45:50 20 Friday before the Monday broadcast on the 28th,
03:45:58 21 in conference calls with Mr. Parrish, Mr. Han,
03:46:04 22 Mr. Wall, Ms. Linehan or others with respect to
03:46:10 23 issuing a statement to ABC or Day One in
03:46:10 24 anticipation of the story?

06:14 25 MR. MURPHY: Objection. You can

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03:46:16 2 answer the question. I don't want you to go into
03:46:18 3 the conversations that you may have had with
03:46:20 4 Mr. Parrish or Mr. Wall, if you remember such
03:46:22 5 conversations. But you can answer the question
03:46:24 6 that's been posed to you.

03:46:32 7 A. I don't recall that kind of a --
03:46:34 8 conference call, is that what you said?

03:46:34 9 Q. Yes.

03:46:36 10 A. I don't recall having a conversation
03:46:42 11 on that subject prior -- I don't recall any
03:46:46 12 conversation prior to the program.

46:48 13 Q. Prior to the program which ran on the
03:46:52 14 28th of February, a Monday, were you aware that
03:46:54 15 there was a story that was going to run?

03:47:02 16 A. I believe there -- at the time or
03:47:04 17 right before the program, maybe that weekend or
03:47:12 18 right before it, there were -- what do you call
03:47:16 19 it, like advertisements for a program coming up.
03:47:22 20 I don't know if I was aware of that two or three
03:47:26 21 or four days before the program.

3:47:34 22 But I was aware enough to know to
03:47:34 23 watch it.

03:47:36 24 Q. Prior to the program, were you aware
7:42 25 of any communications between Day One and Philip

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03:47:44 2 Morris about the program?

03:47:50 3 MR. MURPHY: Objection as to form.

03:47:54 4 A. I don't recall having heard of any
03:48:00 5 inquiries between Day One and Philip Morris prior
03:48:08 6 to the program. I don't recall having heard
03:48:08 7 anything.

03:48:26 8 Q. On Friday, February 25, the
03:48:32 9 Commissioner of the FDA, Mr. Kessler, issued a
03:48:38 10 letter to Scott Ballin regarding smoking
03:48:40 11 cigarettes and nicotine. I have the letter if
03:48:42 12 you want to see it. Do you recall that letter
:48:44 13 being issued?

03:48:50 14 A. I recall hearing about Kessler
03:48:56 15 responding to -- was it COSH, C-O-S-H?

03:49:00 16 A. I think it's B-a-l-l-i-n, Scott
03:49:04 17 Ballin.

03:49:08 18 A. But doesn't he represent the
03:49:10 19 Coalition on Smoking and Health? I do recall
03:49:18 20 hearing about that news or reading it in the kind
03:49:22 21 of FYI information. I don't know if it was
03:49:26 22 Friday or Monday, but I recall when that
03:49:28 23 happened.

03:49:30 24 Q. Dr. Houghton, do you recall
:49:38 25 playing -- strike that. Do you recall

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03:49:44 2 participating by phone in a discussion about
03:49:52 3 Dr. Kessler's letter on that Friday, February
03:49:56 4 25th, before the letter was issued?

03:50:08 5 A. I just don't recall having
03:50:16 6 conversations on that subject. What I recall is
03:50:24 7 reading FYI or news or something on it. I don't
03:50:26 8 recall discussions.

03:51:22 9 Q. Dr. Houghton, you've just been handed
03:51:24 10 what's been marked Houghton Exhibit 28, a
03:51:26 11 document that has as its first page a fax cover
03:51:32 12 sheet from David Nicoli to Vic Han. It's dated
51:36 13 February 25, 1994. It has production number PA
03:51:46 14 100332 through 338, or 2023913510 through 3516.

15 (Houghton Exhibit 28 for
16 identification, fax cover sheet from David Nicoli
17 to Vic Han dated February 25, 1994.)

03:51:50 18 Q. Can you tell from just quickly
03:51:52 19 looking at it whether or not you have seen this
03:51:52 20 document before?

03:53:28 21 A. I don't recall having seen it.

03:53:50 22 THE VIDEO OPERATOR: We're going off
23
24
25

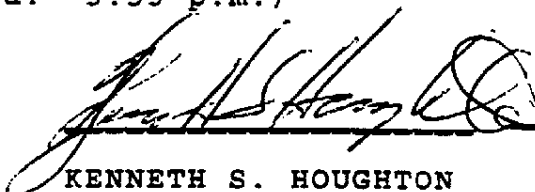
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the record. The time on the screen is 3:53:55.

(Time noted: 3:53 p.m.)



KENNETH S. HOUGHTON

Subscribed and sworn to before me

this 29th day of April, 1995.

Brenda L. Wright
Notary Public
County of Chesterfield
State of Virginia

My Commission Expires January 31, 2000

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C E R T I F I C A T E

I, LEE A. BURSTEN, a Registered Professional Reporter and Notary Public within and for the Commonwealth of Virginia, do hereby certify:

That KENNETH S. HOUGHTON, the witness whose continued deposition is hereinbefore set forth (pages 175 through 329) was previously duly sworn, and that such continued deposition is a true record of the testimony of said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of August, 1995.


LEE A. BURSTEN, R.P.R.

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E X H I B I T S

DESCRIPTION	PAGE	LINE
(Houghton Exhibit 17 for identification, 1992 Philip Morris U.S.A. R&D product development department operational plans.).....	182	11
(Houghton Exhibit 18 for identification, The Nicotine Program.)...	234	3
(Houghton Exhibit 19 for identification, Project 4009, Development smoke studies.).....	240	5
(Houghton Exhibit 20 for identification, memo from J. L. Charles to Dr. R. B. Seligman dated March 18, 1980.).....	246	20
(Houghton Exhibit 21 for identification, memo from T. S. Osdene to Dr. R. B. Seligman and directors dated August 12, 1980.).....	251	25
(Houghton Exhibit 22 for identification, patent number 4,256,126.)	262	13
(Houghton Exhibit 23 for identification, Motives and incentives in cigarette smoke, production number PA 153072 through 3074.).....	278	25
(Houghton Exhibit 24 for identification, Motives and incentives in cigarette smoking, production number PA 253925 through PA 253942.).....	282	21
(Houghton Exhibit 25 for identification, memo from G. N. Yatrakis to H. L. Spielberg dated April 4, 1990.).....	286	2
(Houghton Exhibit 26 for identification, fax transmission from Kathleen Linehan with attached documents.).....	291	21

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E X H I B I T S

DESCRIPTION	PAGE	LINE
(Houghton Exhibit 27 for identification, letter from Stanley Temko of Covington & Burling to Michael Eriksen dated October 25, 1993.)	310	23
(Houghton Exhibit 28 for identification, fax cover sheet from David Nicoli to Vic Han dated February 25, 1994.)	325	14

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